Paramanantham s/o MV Kandiah & Anor v Ganakiamah d/o Sabapathi Pillay & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S1–22–1159 OF 2004
ABDUL WAHAB PATAIL J
16 DECEMBER 2008

Succession — Distribution of estate — Intestacy — Beneficiaries renouncing rights to share in property of deceased in favour of administratrix — Letter of renunciation and consent executed — Whether renunciation valid and effective — Whether administratrix had become absolute beneficial owner of property of deceased

Succession — Letters of administration — Agreement to renounce — Beneficiaries renouncing rights to share in property of deceased in favour of administratrix — Letter of renunciation and consent executed — Whether renunciation valid and effective — Whether administratrix had become absolute beneficial owner of property of deceased

Letters of administration were granted on 27 March 1990 to Ganakiamah a/p Sabapathi Pillay ('the defendant') and Sakahthevi a/p Kandiah as administratrixes of the deceased Murugar Velu Pillai Kandiah s/o Velu Pillai ('deceased'). An order dated 2 September 1992 in clear and plain ordinary terms authorised the transfer of all interest and shares of the beneficiaries in the property then in the name of the deceased to the defendant absolutely. The issue in dispute was whether the order and a letter of renunciation and consent dated 17 July 1992 executed by the plaintiffs and three others could be construed as an agreement by the signatories to renounce all their rights to their share in the proceeds of the sale of the property as per their entitlement under the Distribution Act 1958 and to have their shares transferred in the name of the defendant absolutely or whether, despite the execution of the letter of renunciation and consent and the order, the defendant was still holding the property of the deceased as a representative of the estate.

Held, dismissing the plaintiffs' claim with costs:

(1) The letter of renunciation and consent, predating the order, recorded

that the undersigned, in consideration of natural love and affection for the defendant gave up and renounced all their rights in the property of the deceased. The language, in consideration of natural love and affection would not have arisen if the transfer and conveyance was to the defendant as administrator only. The intent and effect of the two documents were very plain and clear (see para 7).

(2) The fact that no mention was made of the proceeds of sale of the property did not, in an objective consideration, render questionable the nature of the transfer and conveyance to the defendant. Indeed it supported the conclusion that the transfer and conveyance was to her absolutely, because in such case the issue of what happens to the proceeds of sale does not arise at all (see para 11).

(3) The entry upon the register document of title that the property being transmitted in the name of the defendant in her capacity as representative of the estate of the deceased was clearly in error. That document does not itself create and give rights where none exist. Indeed notations 'as trustee' or 'as administrator' are irrelevant under the Torrens system of land law reflected by the National Land Code (see para 12).

[Bahasa Malaysia summary

Surat kuasa mentadbir diberikan pada 27 Mac 1990 kepada Ganakiamah a/p Sabapathi Pillay ('defendan') dan Sakahthevi a/p Kandiah sebagai pentadbir-pentadbir si mati Murugar Velu Pillai Kandiah s/o Velu Pillai ('si mati'). Satu perintah bertarikh 2 September 1992 dalam terma yang jelas dan ringkas memberi kuasa untuk memindahkan segala kepentingan dan syer benefisiari-benefisiari dalam harta atas nama si mati kepada defendan sepenuhnya. Isu yang dipertikaikan adalah sama ada perintah dan surat penolakan dan persetujuan bertarikh 17 Julai 1992 yang disempurnakan oleh plaintif-plaintif dan tiga orang lainnya boleh ditafsirkan sebagai satu perjanjian oleh penandatangan-penandatangan untuk melepaskan semua hak mereka terhadap syer mereka dalam hasil jualan harta mengikut hak-hak mereka bawah Akta Pembahagian 1958 dan untuk memindahkan syer mereka atas nama defendan sepenuhnya atau sama ada, meskipun selepas penyempurnaan surat penolakan dan persetujuan dan perintah, defendan masih memegang harta si mati sebagai wakil harta pusaka.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Surat penolakan dan persetujuan, prapenarikhan perintah, merekodkan bahawa penandatangan, sebagai balasan untuk kasih sayang semula jadi terhadap defendan menyerahkan dan melepaskan segala hak mereka

dalam harta si mati. Bahasa, sebagai balasan untuk kasih sayang semula jadi, tidak akan timbul sekiranya pengalihan dan pemindahhakan hanya kepada defendan sebagai pentadbir sahaja. Tujuan dan kesan kedua-dua dokumen itu adalah ringkas dan jelas (lihat perenggan 7).

(2) Fakta bahawa tiada sebutan dibuat mengenai hasil jualan harta tidak, dalam pertimbangan objektif, mewajarkan ciri pengalihan dan pemindahhakan kepada defendan dipersoalkan. Sudah pasti ia menyokong keputusan bahawa pengalihan dan pemindahhakan kepada defendan adalah sepenuhnya, kerana dalam kes sedemikian isu berkenaan dengan apa yang berlaku kepada hasil jualan tidak ditimbulkan sama sekali (lihat perenggan 11).

(3) Kemasukan dalam dokumen daftar hakmilik bahawa harta tersebut diturunkan atas nama defendan atas kedudukannya sebagai wakil harta pusaka si mati adalah dengan jelasnya silap. Dokumen tersebut tidak dengan sendirinya mewujudkan atau memberi hak-hak yang tidak wujud. Tentu sahaja notasi 'as trustee' atau 'as administrator' tidak relevan di bawah sistem undang-undang tanah Torrens seperti yang dijelaskan oleh Kanun Tanah Negara (lihat perenggan 12).]

Notes

For a case on agreement to renounce, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) para 2443.

For cases on intestacy, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2322–2334.

Legislation referred to

Distribution Act 1958
National Land Code
Probate and Administration Act 1959 s 8(1)
Rules of the High Court 1980 O 71 rr 31(1), (4), 34, Form 169

Ranjan Chandran (Ivan Ang with him) (Ranjan Chitravathy & Nik) for the plaintiffs.
Sharon Balasingam (Arulampalam & Co) for the defendants.

Abdul Wahab Patail J:

[1] After full case management where the pleadings were analysed, what is not disputed and what is disputed identified, the disputes specified, evidence relied upon in respect of disputed particular facts verified as to authenticity, the parties came back before the court with one identified issue for submission as would dispose of the matter:

Whether the order dated 2 September 1992 and the letter of renunciation and consent dated 17 July 1992 executed by the plaintiffs, Poovanandran s/o MV Kandiah, Sakathevi a/p Kandiah and Indran s/o MV Kandiah is construed as an agreement by the signatories to renounce all their rights to their share in the proceeds of the sale of the property as per their entitlement under the Distribution Act 1958 and to have their shares transferred in the name of the defendant absolutely or whether, despite the execution of the letter of renunciation and consent dated 17 July 1992 and the order dated 2 September 1992, the defendant (Ganakiamah) was still holding the property of the deceased as a representative of the estate?

[2] The question, more simply is whether Ganakiamah a/p Sabapathi Pillay, the first defendant holds the property absolutely or as representative of the estate. In the event the plaintiffs Paramanantham a/l MV Kandiah and Lalithathevi a/p MV Kandiah applied for the following orders:

(a) Suatu deklarasi ('declaration') bahawa plaintif-plaintif adalah berhak secara undang-undang untuk milikan benefisial bahagian masing-masing RM62,666.66 dengan faedah terakru atas wang hasil penjualan hartanah tersebut dengan deskripsi Geran No 20726, Lot 155, Sec 31 Bandar Petaling Jaya, Daerah Kuala Lumpur dengan alamat kediaman di No 2, Jalan 18/20, Taman Kanagapuram, 46000 Petaling Jaya, Selangor Darul Ehsan;

(b) Bagi suatu perintah bahawa defendan-defendan membayar kepada plaintif-plaintif bahagian masing-masing sebanyak RM62,666.66 serta-merta ('forthwith');

(c) Kos; dan

(d) Lain-lain relief yang difikirkan suai-manfaat oleh mahkamah Yang Mulia ini.

[3] The order of 2 September 1992 is as follows:

DI ATAS PERMOHONAN pemohon-pemohon yang dinamakan diatas DAN SETELAH MEMBACA saman pemula bertarikh 21 hb Julai, 1992 dan Afidavit Ganakiamah a/p Sabapathi Pillay dan Sakahthevi a/p Kandiah dan juga surat persetujuan bertarikh 17hb Julai, 1992 DAN SETELAH MENDENGAR Cik V.S. Ami kaunsel bagi pihak pemohon MAKA DENGAN INI ADALAH DIPERINTAHKAN:

1. Bahawa pemohon-pemohon diatas diberikan kebenaran sebagai Pentadbir Harta Pusaka Murugar Velu Pillay Kandiah s/o Velu Pillay untuk meminda semua faedah dan bahagian benefisiari yang berikut:-

   (i) Ganakiamah a/p Sabapathi Pillay (No. K/P. 3838174);

   (ii) Sakahthevi a/p Kandiah (No. K/P. 0486489)

(iii) Indran s/o M.V. Kandiah (No. K/P. S2513490G)

(iv) Lalithathevi a/p V. Kandiah (No. K/P. 7881965)

(v) Poovanandran a/1 V. Kandiah (No. K/P. 8112911)

(vi) Paramanantham a/1 Murugar Velupillai Kandiah (No. K/P 5032483)

dalam harta pesaka si mati yang tersebut di atas yang terletak di No. 2, Jalan 18/20, Taman Kanagapuram, 46000 Petaling Jaya, Selangor Darul Ehsan yang telah didaftarkan didalam nama simati, diatas kepada Ganakiamah d/o Sabapathi Pillay (No. K/P. 3838174) secara mutlak.

2. Bahawa Pentadbir Harta Pusaka bagi si mati di atas diberikan kuasa untuk melaksanakan Memoranda Pindahmilik dan dokumen-dokumen berkaitan yang perlu bagi menguatkuasa dan menyempurnakan pindahmilik yang disebut diatas.

3. Bahawa kos yang berkaitan dengan permohonan ini ditanggung dan dibayar oleh Pemohon di atas.

[4] The applicants were Ganakiamah a/p Sabapathi Pillay and Sakahthevi a/p Kandiah (administratrixes of the deceased Murugar Velu Pillai Kandiah s/o Velu Pillai). They were the the persons to whom letters of administration were granted on 27 March 1990.

[5] The letter of renunciation and consent dated 17 July 1992 is as follows:

WHEREAS WE, SAKAHTKEVI A/P KANDIAH (Nric No. 0486489), INDRAN S/O M.V. KANDIAH (Nric No. S2513490G), LALITHATHEVI A/P V. KANDIAH (Nric No. 7881965), POOVANANDRAN A/L V. KANDIAH (Nric No. 8112911), PARAMANANTHAM A/L MURUGAR VELUPILLAI KANDIAH (Nric No. 5032483) all of No. 2 Jalan 18/20, Taman Kanagapuram, 46000 Petaling Jaya, Selangor Darul Ehsan are the beneficiaries entitled to a share in the Estate of MURUGAR VELU PILLAY KANDIAH S/0 VELU PILLAY deceased (hereinafter referred to as "the said Deceased") and is therefore entitled to a share in all the assets of the estate of the said deceased which includes of a property at No. 2, Jalan 18/20, Taman Kanagapuram, 46000 Petaling Jaya, Selangor.

We are the lawful children of the deceased.

AND WHEREAS we are desirous that GANAKIAMAH A/P SABAPATHI PILLAY (Nric No. 3838174) shall have the benefit of our shares in the said property of the said deceased.

We, the undersigned, in consideration of the natural and love and affection we have for the said GANAKIAMAH A/P SABAPATHI PILLAY (Nric No. 3838174) hereby give up and renounce all and whatsoever rights and the said shares in the

said property of the said deceased which we are entitled to and direct that all our said shares in the said property of the said deceased transferred and conveyed to the said GANAKIAMAH D/O SABAPATHI PILLAY as hereinabove state whose acceptance and receipt effectual as acceptance and receipt by ourselves.

AND we further hereby give our CONSENT to GANAKIAMAH D/O SABAPATHI PILLAY as the Administrator of the Estate of the said deceased to transfer and convey to the said GANAKIAMAH D/O SABAPATHI PILLAY ALL our rights and shares in the said property of the said deceased as hereinabove stated.

SIGNED by the said

(1) SAKAHTHEVI A/P KANDIAH

(2) INDRAN S/O M.V. KANDIAH

(3) LALITHATHEVI A/P V. KANDIAH,

(4) POOVANANDRAN A/L V. KANDIAH,

(5) PARAMANANTHAM A/L MURUGAR VELUPILLAI KANDIAH

at Kuala Lumpur on this 17th day of July, 1992.

[6] The order of 2 September 1992 in clear and plain ordinary terms authorised the transfer of all interest and shares of the beneficiaries in the property then in the name of the deceased Murugar Velu Pillay Kandiah s/o Velu Pillay to Ganakiamah d/o Sabapathi Pillay absolutely.

[7] The renunciation of their interest and shares as the beneficiaries to Ganakiamah d/o Sabapathi Pillay, who is one of the administrators of the estate, requires to be prudent, clear language. The letter of renunciation and consent dated 17 February 1992, predating the order of 2 September 1992 acknowledged the right of the lawful children of the deceased as beneficiaries to a share in the estate. It referred to their desire that Ganakiamah d/o Sabapathi Pillay shall have the benefit of their shares. It recorded that the undersigned, in consideration of natural love and affection for Ganakiamah d/o Sabapathi Pillay gave up and renounce all and whatsoever rights and the said shares in the property of the deceased to which they were entitled, and directed that all their shares in the property of the said deceased be transferred and conveyed to the said Ganakiamah d/o Sabapathi Pillay. Further, they gave their consent that Ganakiamah d/o Sabapathi Pillay as administrator of the estate of the said deceased to transfer and convey to the said Ganakiamah d/o Sabapathi Pillay all their rights and shares in the property of the deceased as therein above stated. It removed any question that might be raised as to the act of Ganakiamah d/o Sabapathi Pillay who is the administrator to transfer and convey the property into her name without qualification as administrator, meaning that she received it personally. The language, in

consideration of natural love and affection does not arise if the transfer and conveyance was to Ganakiamah d/o Sabapathi Pillay as administrator only. A

[8] The intent and effect of the two documents are therefore very plain and clear. The order of 2 September 1992 was to the two defendants in their capacity as administrators to transfer and convey the property into the name of one of them, to wit, Ganakiamah d/o Sabapathi Pillay, who is the widow of the deceased, absolutely. B

[9] Hence the following submission for the plaintiffs Paramanantham a/l MV Kandiah and Lalithathevi a/p MV Kandiah is not supported by the evidence: C

> In so far as the 1992 Order is concerned, there is therefore nothing in that Order to even suggest that the Plaintiffs/Applicants before this Court, have given up or renounced their rights to their share in the proceeds of the sale of the property as per their entitlement under the Distribution Act, 1958. It is respectfully submitted that this should read 1958. The error is regretted. D
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> This is the respectful submission of the Plaintiffs/Applicants in so far as the 1992 Order is concerned and it will be the respectful submission of the Plaintiffs/Applicants that this Honourable Court, when construing the 1992 Act, and thereby determining on the specific question or issue as set out in the Appendix, should hold that the 1992 Order is not an Order whereby the Plaintiffs/Applicants can be said to have renounced all their rights to their shares in the proceeds of the sale of the property, to be distributed under the Distribution Act 1958. E F

[10] As for the letter of renunciation and consent dated 17 July 1992 it was submitted:

> What the Plaintiffs/Applicants contend, with respect, is that the said Letter of Renunciation and Consent does not go that far as to evidence a renunciation by the Plaintiffs/Applicants of their rights to the share in the proceeds of the sale of the property as per their entitlement under the Distribution Act 1958 (emphasis added). G
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> One, and perhaps the main reason for the Plaintiffs'/Applicants' contention as set out in 4 above is that, the document itself does not make any mention of the proceeds of the sale of the property. H

[11] The fact no mention was made of the proceeds of sale of the property does not, in an objective consideration, render questionable the nature of the transfer and conveyance to Ganakiamah d/o Sabapathi Pillay. Indeed it supports the conclusion that the transfer and conveyance is to her absolutely, because in such case the issue of what happens to the proceeds of sale does not arise at all. I

[12] In the light of the above, the entry upon the register document of title that the property being transmitted in the name of Ganakiamah d/o Sabapathi Pillay in her capacity as representative of the estate of the deceased is clearly in error. That document does not itself create and give rights where none exist. Indeed notations 'as trustee' or 'as administrator' are irrelevant under the Torrens system of land law reflected by the National Land Code.

[13] It was submitted on the basis of s 8(1) of the Probate and Administration Act 1959 (Act 97) that renunciation applied only to the right of representation. This submission holds no merit whatsoever since the matter of s 8(1) does not arise in view of the very clear language of the letter of renunciation and consent of 17 July 1992.

[14] Counsel for the plaintiffs proceeded to O 71 r 31(1) of the Rules of the High Court 1980 which reads:

> Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in some other capacity, unless he expressly renounces such right.

[15] He then submitted that O 71 r 31(4) of the Rules of the High Court, declares that, 'a written renunciation of a right to a grant under s 3 of the Act, must be in one of the forms in Form 169', and continued that what is clear from the Form 169 is that the renunciation as per that Form is a renunciation to 'all my right and title to letters of administration of the estate of the said deceased', and nothing more.

[16] Order 71 r 34 deals with renunciation of probate and administration and not renunciation of interest and share in an estate by a beneficiary. There is no requirement that the latter renunciation must be in Form 169.

[17] The plaintiffs and others had on 12 December 1989 signed renunciations in Form 169. In it they renounced all their rights and title for grant of letters of administration in the estate of the deceased. In other words, they did not want to be administrators or administratrixes. In that document they did not renounce their right to interest and share in the estate of the deceased. Thus, the need arose for the letter of renunciation and consent of 17 July 1992 in which they renounced all interest and share in the estate as beneficiaries.

[18] There being no merit in the case for the plaintiffs, the plaintiffs' claim is dismissed with costs.

Plaintiff's claim dismissed with costs.

Reported by Kanesh Sundrum